

APPENDIX.**Revenue Act of 1928,****"Sec. 703. Deduction of Estate and Inheritance Taxes—Retroactive.**

(a) In determining the net income of an heir, devisee, legatee, distributee, or beneficiary (hereinafter in this section referred to as 'beneficiary') or of an estate for any taxable year, under the Revenue Act of 1926 or any prior revenue Act, the amount of estate, inheritance, legacy, or succession taxes paid or accrued within such taxable year shall be allowed as a deduction as follows:

(1) If the deduction has been claimed by the estate, but not by the beneficiary, it shall be allowed to the estate;

(2) If the deduction has been claimed by the beneficiary, but not by the estate, it shall be allowed to the beneficiary;

(3) If the deduction has been claimed by the estate and also by the beneficiary, it shall be allowed to the estate (and not to the beneficiary) if the tax was actually paid by the legal representative of the estate to the taxing authorities of the jurisdiction imposing the tax; and it shall be allowed to the beneficiary (and not to the estate) if the tax was actually paid by the beneficiary to such taxing authorities;

(4) If the deduction has not been claimed by the estate nor by the beneficiary, it shall be allowed as a deduction only to the person (either the estate or the beneficiary) by whom the tax was paid to such taxing authorities, and only if a claim for refund or credit is filed within the period of limitation properly applicable thereto;

(5) Notwithstanding the provisions of paragraphs (1), (2), (3), and (4) of this subsection,

if the claim of the deduction by the estate is barred by the statute of limitations, but such claim by the beneficiary is not so barred, the deduction shall be allowed to the beneficiary, and if such claim by the beneficiary is barred by the statute of limitations, but such claim by the estate is not so barred, the deduction shall be allowed to the estate.

(b) As used in this section, the term 'claimed' means claimed—

- (1) In the return; or
- (2) In a claim in abatement filed in respect of an assessment made on or before June 2, 1924."

EXCERPTS FROM CALIFORNIA INHERITANCE TAX LAW.

General Laws of California of 1923, Part 2, Page 3502, Article 8443:

"Sec. 1. Title. (1) This act shall be known as the 'inheritance tax act.'

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"Sec. 4. Tax when property value not over twenty-five thousand dollars. When the property or any beneficial interest therein so passed or transferred exceeds in value the exemption hereinafter specified and shall not exceed in value twenty-five thousand dollars, the tax hereby imposed shall be:

"(1) Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal ancestor, lineal issue of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent (provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter), or any lineal issue of such adopted or mutu-

ally acknowledged child, at the rate of one per centum of the clear value of such interest in such property.

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"Sec. 5. Tax when property value exceeds twenty-five thousand dollars. (1) When the market value of such property or interest passed or transferred to any of the persons mentioned in subdivision one of section four exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

"Rates of tax on property or interest transferred.

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, two per centum of such excess.

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"Sec. 7. (1) Time of payment. Interest. Discount. Bond. All taxes imposed by this act, unless otherwise herein provided for shall be due and payable at the death of the decedent, and if the same are paid within eighteen months, no interest shall be charged and collected thereon, but if not so paid, interest at the rate of ten per centum per annum shall be charged and collected from the time said tax accrued; provided, that if said tax is paid within six months from the accruing thereof a discount of five per centum shall be allowed and deducted from said tax. And in all cases where the executors, administrators, or trustees do not pay such tax within eighteen months from the death of the decedent, they shall be required to give a bond for the payment of said tax, together with interest.

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"Sec. 8. (3) Property transferred in trust. When property is transferred in trust or otherwise, and the rights, interests or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended, or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the

said contingencies or conditions, would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this act, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this act; such return of overpayment shall be made in the manner provided by section eleven of this act, upon order of the court having jurisdiction; provided, that the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax or the trustees thereof may elect not to pay the same until such person or persons, or body politic or corporate beneficially interested in such property shall come into the actual possession or enjoyment thereof, and in that case such person or persons or body politic or corporate or trustees shall execute a bond to the people of the state of California in a penalty of twice the amount of said tax with such sureties as the said superior court may approve, conditioned for the payment of said tax and interest thereon at the rate of seven per cent per annum commencing at the expiration of eighteen months from the death of the decedent at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, * * *.

“(4) Estates in expectancy. Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished

value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.

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"Sec. 9. (1) Collection of tax by administrator, etc. Any administrator, executor, or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator, or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator, or trustee shall retain the tax upon the whole amount; but if it be not in money he shall make application to the superior court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require."

REPORTS OF THE HOUSE AND SENATE COMMITTEES ON
SECTION 703 OF THE REVENUE ACT OF 1923.

The proceedings in committee are quoted in the opinion of Mr. Sternhagen in *Lansill v. Commissioner*, 17 B. T. A., 413, 426, as follows:

"As the provision was originally introduced in the House bill it contained no such matter as that

of subsection (a) (5) and subsection (b). It provided only for deductions 'claimed in the return'. The report of the House Committee on Ways and Means in respect of this section was as follows:

"Sec. 703. Deduction of Estate and Inheritance Taxes—Retroactive.

"Section 214(a) (3) of the Revenue Act of 1926 and corresponding provisions of prior revenue Acts permit a deduction, from gross income in computing the net income subject to tax, for taxes paid or accrued during the taxable year. Obviously this provision applies only to taxes imposed upon the taxpayer, and does not permit the deduction of taxes paid by a volunteer. Extraordinary difficulty has been encountered in applying this deduction in the case of estate, inheritance, legacy, and succession taxes, imposed by a State, Territory, or a foreign country. These taxes are usually paid by the executor of the estate. Under the regulations of the department the deduction was allowed the estate, in computing its income tax, if the tax was considered as an estate tax, and was allowed as a deduction to the beneficiary if the tax was considered to be an inheritance, legacy, or succession tax. As a result of recent Supreme Court decisions (*Keith v. Johnson*, and *United States v. Mitchell*), redeterminations of the deductions claimed by the estate by the beneficiary will be necessary unless the situation is remedied by retroactive legislation. Consequently your committee deems it advisable to insert section 705 in the bill, the general effect of which will be to ratify what the taxpayers have done and to prescribe specific rules for future action.

"The Senate on the floor struck out the requirement that the only cognizable claim for the deduction should be that made in the return and inserted (b) instead. It also added (a) (5). Thereafter the

report of the Conference Committee of both Houses contained the following:

"Amendment No. 210: The House bill contained retroactive provisions removing the uncertainty of the present law as to the deductibility, in computing net income, of amounts paid as estate, inheritance, succession, or legacy taxes, and validated the deductions claimed in the return of the taxpayer, and provided for the case where the deduction was claimed by both the estate and the beneficiary and the case where neither claimed it. The Senate amendment adopts the provisions of the House bill and extends them to cases where the deduction was claimed by a claim in abatement, and in order to make it certain that the deduction will be allowed either to the estate or to the beneficiary in any event, the Senate amendment allows the deduction to the estate if the beneficiary is barred from filing a claim for refund by the statute of limitations, and vice versa. This provision does not permit the filing of a claim for refund, however, if the period of limitation has expired; and the House recedes.

"The bill was thereupon enacted containing the language as above quoted." (426-427)
